

IN THE HIGH COURT OF FIJI
AT LABASA
[APPELLATE JURISDICTION]

CRIMINAL APPEAL CASE NO. HAA20 OF 2018

(Magistrates' Court Case No. 117 of 2018)

BETWEEN: MANOA RADRODRO

APPELLANT

AND: THE STATE

RESPONDENT

Counsel: Appellant in person
Ms D Kumar for the Respondent

Date of Hearing: 24 July 2018

Date of Judgment: 26 July 2018

JUDGMENT

- [1] This is an appeal against sentence only.
- [2] On 7 March 2018, the appellant was charged with an offence of found in possession of an illicit drug contrary to section 5 (a) of the Illicit Drugs Control Act. He pleaded guilty to the charge in the Magistrates' Court at the first reasonable opportunity and was sentenced to 3 years' imprisonment with a non-parole period of 2 years.
- [3] The facts were that on 1 March 2018, the police raided a vacant house in Drekeniwai, Cakaudrove and found a bucket containing dried leaves believed to be marijuana.

The leaves were tested at a government lab and were confirmed to be Cannabis Sativa. The total weight was 1358.6 grams.

- (4) The appellant was arrested. Under caution, he admitted that the seized marijuana belonged to him.
- (5) The appellant's main complaints are that his remand period was not taken into account in sentencing and that the learned Magistrate miscalculated the one-third discount she gave for his guilty plea.
- (6) The learned Magistrate used the two-tiered approach to give reasons for the sentence she imposed on the appellant. She identified the appropriate tariff of 3 to 7 years imprisonment based on the case of *Sulua v State* Cr App No AAU0093 of 2008 and then used a starting point of 3 years to make an adjustment to the sentence to reflect the mitigating and aggravating factors. The learned Magistrate said the aggravating factors were that using a vacant house next to his home to store the illicit drug showed planning and exposed his fellow villagers to a crime.
- (7) Since the appellant had entered an early guilty plea consistent with his admissions to police, the learned Magistrate said a discount of one-third was justified. However, when calculating the discount, the learned Magistrate gave a reduction of 6 months for the early guilty plea. She arrived at the final sentence as follows:

Starting point	-	36 months
Add Aggravating factors	-	12 months
Deduct early guilty plea	-	6 months
Deduct mitigating factors	-	6 months
Final term	-	36 months (3 years imprisonment)
- (8) One-third of 36 is 12 months and not 6 months. There is a mathematical error in the calculation of the discount for the appellant's guilty plea.
- (9) Further, it is not in dispute that the appellant had been in custody on remand from 7 March 2018 till 28 March 2018 when he was sentenced. Section 24 of the Sentencing

and Penalties Act required the court to make an adjustment to the sentence to reflect the appellant's remand period. The learned Magistrate did not make any adjustment to the sentence to reflect the appellant's remand period.

- (10) In mitigation, the appellant said he was 23 years old, single and a farmer. He was a first time offender. He was genuinely remorseful and pleaded guilty to the charge at the first reasonable opportunity and saved court time and resources. The learned Magistrate was correct to say that a one-third discount was justified for the early guilty plea. The mathematical error in calculating that discount is unfortunate. The appellant is also entitled to a reduction in sentence to reflect his remand period. There are errors in the exercise of the sentencing discretion.
- (11) However, I am mindful that deterrence is the primary purpose for sentence for possession of a large amount of an illicit drug. Suspension is inappropriate.
- (12) The sentence imposed in the Magistrates' Court is set aside and substituted with a sentence of 2 years and 5 months' imprisonment with a non-parole period of 18 months.
- (13) The appeal against sentence is allowed.



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Hon. Mr Justice Daniel Goundar

Solicitors:

Appellant in person
Office of the Director of Public Prosecutions for the Respondent